

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING
Rules I through X pertaining to 72-hour)	ON PROPOSED ADOPTION
presumptive eligibility for adult crisis)	
stabilization services)	

TO: All Interested Persons

1. On March 5, 2008, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on February 25, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

RULE I 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS
STABILIZATION SERVICES: DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

- (1) "Adult" means an individual who is 18 years of age or older.
- (2) "Assessment" means a face-to-face interview or observation of an individual by a mental health practitioner to evaluate the individual's mental status or the nature and severity of the individual's mental illness for the purpose of determining which interventions are needed to stabilize the individual.
- (3) "Care coordination" means the process of planning and coordinating care and services to meet the individual's mental health service needs. Care coordination includes:
 - (a) the development and monitoring of the crisis stabilization plan;
 - (b) identifying available natural and community services and supports for the individual being served;
 - (c) contact with others as appropriate, for the purpose of supporting;
 - (d) assisting the individual being served;
 - (e) service coordination;
 - (f) referral; and
 - (g) discharge planning.

(4) "Crisis" means a serious unexpected situation resulting from an individual's apparent mental illness in which the symptoms are of sufficient severity, as determined by a mental health practitioner, to require immediate care to avoid:

- (a) jeopardy to the life or health of the individual; or
- (b) death or bodily harm to the individual or to others.

(5) "Crisis care manager" means a trained mental health staff member who is responsible for managing the implementation of a crisis stabilization plan until the individual is discharged from crisis stabilization services.

(6) "Crisis management services" means the services listed in [RULE II], when delivered by an enrolled provider.

(7) "Crisis stabilization" means development and implementation of a short-term intervention to respond to a crisis, for the purposes of reducing the severity of an individual's mental illness symptoms and attempting to prevent admission of the individual to a more restrictive environment.

(8) "Crisis stabilization plan" means an initial, brief, individualized plan that complies with [RULE III] and is created within 24 hours of an assessment.

(9) "Crisis stabilization provider" means a provider of services that is a legal entity enrolled under ARM 37.89.115 and has executed a provider enrollment addendum approved by the department, or is a hospital.

(10) "Crisis stabilization services" means the services listed in [RULE IV] when delivered by a crisis stabilization provider during an individualized psychiatric emergency intervention, delivered in a safe environment, to:

- (a) stabilize a crisis;
- (b) improve diagnostic clarity;
- (c) find appropriate alternatives to psychiatric hospitalization;
- (d) treat those symptoms that can be improved within a brief period of time;

and

(e) arrange appropriate follow-up care or to refer an individual to a provider of the appropriate level of care and treatment.

(11) "Day" means a 24 hour period beginning with the first hour that crisis stabilization services are delivered.

(12) "Department" means the Montana Department of Public Health and Human Services.

(13) "Discharge" means the end of reimbursement for crisis stabilization services delivered under this subchapter.

(14) "Eligibility determination" means a decision made by a mental health practitioner that an individual's situation meets the definition of crisis as defined in this rule. This decision establishes presumptive eligibility as defined in (15).

(15) "Medically necessary mental health services" means outpatient and inpatient psychiatric clinical crisis stabilization services delivered to an individual under this subchapter.

(16) "Medically necessary service" means a service that is necessary to assess, diagnose, treat, or prevent the worsening of conditions for an individual who is experiencing a crisis.

(17) "Mental health practitioner" means an individual who is:

- (a) a physician licensed under Title 37, chapter 3, MCA;
- (b) a professional counselor licensed under Title 37, chapter 23, MCA;

- (c) a psychologist licensed under Title 37, chapter 17, MCA;
 - (d) a social worker licensed under Title 37, chapter 22, MCA;
 - (e) an advanced practice registered nurse, as provided for in Title 37, chapter 8, MCA, and ARM 24.159.1490 with a clinical specialty in psychiatric mental health nursing; or
 - (f) a physician assistant licensed under Title 37, chapter 20, MCA, with clinical mental health experience.
- (18) "Presumptive eligibility" means a period of up to 72 hours during which time-limited mental health crisis stabilization services delivered to an individual experiencing a crisis will be reimbursed by the department.

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

RULE II 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CRISIS MANAGEMENT SERVICES (1) Crisis management services may include, but are not limited to:

- (a) observation of symptoms and behavior;
- (b) support or training for self-management of psychiatric symptoms;
- (c) close supervision of the individual being served;
- (d) monitoring behaviors after administration of medication during the stabilization period;
- (e) psychotropic medications administered during the 72 hour period of crisis stabilization; and
- (f) laboratory services necessary for evaluation and assessment during the 72 hour crisis stabilization period.

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

RULE III 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CRISIS STABILIZATION PLAN (1) A crisis stabilization plan must:

- (a) identify the person who will serve as the crisis care manager;
- (b) list problems identified by the mental health crisis assessment;
- (c) delineate responsibilities for implementing the plan;
- (d) list the individual's strengths and resources;
- (e) address cultural considerations;
- (f) identify support network options; and
- (g) identify referral and transition activities that will occur at discharge.

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

RULE IV 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: REIMBURSABLE SERVICES (1) To be reimbursable under this subchapter, crisis stabilization services must be:

- (a) medically necessary mental health services;
- (b) delivered in direct response to a crisis as defined in this subchapter;
- (c) limited in scope and duration as provided in this subchapter; and
- (d) delivered or contracted for by a crisis stabilization provider and are limited

to:

- (i) a psychiatric diagnostic interview examination;
- (ii) care coordination;
- (iii) individual psychotherapy;
- (iv) family psychotherapy with or without patient;
- (v) one to one community-based psychiatric rehabilitation and support;
- (vi) crisis management services; and
- (vii) services delivered by a primary care provider as defined in ARM 37.86.5001(25), for screening and identifying psychiatric conditions and for medication management.

AUTH: 53-6-101, 53-6-113, MCA

IMP: 53-6-101, MCA

RULE V 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: REIMBURSEMENT FOR SERVICES

(1) Reimbursement for services delivered under this subchapter will be the amounts listed in the Crisis Stabilization Services Fee Schedule dated March 1, 2008.

(2) Reimbursement for services will be limited in accordance with the enrollment agreement between the department and the crisis stabilization provider up to the maximum allowable fee.

(3) The department may revise the Crisis Stabilization Services Fee Schedule from time to time. A copy of the current fee schedule may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

AUTH: 53-6-101, 53-6-113, MCA

IMP: 53-6-101, MCA

RULE VI 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: REIMBURSEMENT EXCLUSIONS (1) This

subchapter does not cover:

- (a) services defined as "nursing facility services" in ARM 37.40.302, or otherwise required by law to be delivered by a nursing facility;
- (b) any form of transportation;
- (c) services delivered under 53-21-132, MCA, pursuant to a petition for civil commitment; and
- (d) medical services that are not directly related to crisis stabilization services.

AUTH: 53-6-101, 53-6-113, MCA

IMP: 53-6-101, MCA

RULE VII 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: WHERE SERVICES MAY BE PROVIDED (1) There are no restrictions regarding where crisis stabilization services under this subchapter may be delivered.

(2) Nursing home residents otherwise eligible under this subchapter may receive crisis stabilization services in a nursing facility.

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

RULE VIII 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CONFIDENTIALITY REQUIREMENTS (1) For all individuals served under this subchapter, including persons assessed but not determined eligible, providers must comply with the record keeping and confidentiality requirements that apply to Medicaid providers under ARM 37.85.414.

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

RULE IX 72 HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CLAIMS AND REIMBURSEMENT (1) All provider claims for crisis stabilization services delivered under this subchapter must be submitted to the department's Medicaid Management Information System (MMIS) contractor according to requirements set forth in ARM 37.85.406. Payments will be made to the provider through the department's Medicaid MMIS contractor.

(2) Providers must accept the amounts payable under this subchapter as payment in full for services delivered to eligible individuals.

(3) The provisions of ARM 37.85.407 apply with respect to third party resources and seeking payment from those sources. Providers are responsible for due diligence to identify and bill other payment sources.

(4) Reimbursement for crisis stabilization services delivered under this subchapter is subject to post payment review and audit by the department, including record management and audit as provided in ARM 37.85.414.

(5) The department may collect from a provider any payment under this subchapter as provided with respect to Medicaid overpayments in ARM 37.85.406(9) through (10)(b).

(6) The department may recover overpayments by withholding or offset as provided in ARM 37.85.513(1).

(7) Services delivered to individuals experiencing a crisis may not be reimbursed if:

(a) they are delivered to an individual within seven days following discharge from crisis stabilization services delivered by this or another provider;

(b) the services delivered were not approved for reimbursement by the department; or

(c) the provider is not enrolled with the department.

(8) If reimbursement is denied because services were delivered to an individual within seven days following discharge from crisis stabilization services delivered by another provider, the provider may request a review to determine whether payment is warranted. A written request for review must be received by the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905 within 30 days after the date of a notice denying a claim. The department will conduct an informal administrative review and may grant full or partial reimbursement for services if it determines that:

(a) complications have arisen because of premature discharge, treatment errors, or omissions in the previous crisis stabilization plan;

(b) the crisis stabilization services are for a condition that could not have been treated during the previous crisis stabilization plan; or

(c) the provider could not have discovered the previous stabilization plan using due diligence.

AUTH: 53-6-101, 53-6-113, MCA

IMP: 53-6-101, MCA

RULE X 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS

STABILIZATION SERVICES: LIMITATIONS (1) This subchapter is not intended to and does not establish an entitlement to:

(a) reimbursement for services delivered to any individual; or

(b) receive any services under the program.

(2) The category of services, the particular provider of services, the duration of services, and other details regarding the services to be covered for a particular individual will be determined and may be restricted by the department or its designee based upon and consistent with the services medically necessary for an eligible individual, the availability of appropriate alternative services, the relative cost of services, the degree of medical need, and other relevant factors.

(a) If the department determines with respect to the program that it is necessary to suspend or eliminate service coverage or otherwise limit services, benefits, or provider participation, in a manner other than provided in this subchapter, the department may implement such changes by providing ten days advance notice published in Montana major daily newspapers with statewide circulation, and by providing ten days advance written notice of changes to affected providers.

(b) Reimbursement for crisis stabilization services delivered under this subchapter will be retroactive to March 1, 2008.

AUTH: 53-6-101, 53-6-113, MCA

IMP: 53-6-101, MCA

4. The Department of Public Health and Human Services (the department) is proposing the adoption of Rules I through X, pertaining to 72 hour presumptive eligibility for adult crisis stabilization services. This proposal is necessary to implement a restricted appropriation by the Montana Legislature in the General

Appropriations Act of 2007 (Chapter 5, March 2007 Special Session Laws of Montana, commonly referred to as "HB 2") with explicit instructions that it must be used only to develop community mental health crisis services and for provision of psychiatric consulting services for community providers who manage and administer community mental health crisis services. To implement the restricted appropriation provided in HB 2 the department is relying on its general rulemaking authority.

The department did not consider an alternative way to achieve the result of this proposal because the appropriation may be used only to develop community mental health crisis services and to provide psychiatric consulting services for community providers who manage and administer community mental health crisis services. The department is proposing these rules to establish the administrative and reimbursement structure for crisis stabilization services and to implement the Legislature's stated intent. In the course of arriving at an appropriation, the Legislature gave consideration to the possible options, decided whether to establish a reimbursement mechanism, and determined an amount necessary to reimburse service providers. Failure to implement the reimbursement appropriation would be contrary to legislative direction and would not provide the intended compensation for providers. Not implementing the compensation as appropriated in HB 2 would serve as a disincentive to providers participating in the program and thereby adversely affect any individual who may be experiencing a mental health crisis.

The rules proposed in this matter are intended to address administrative and reimbursement details not specified in HB 2. The proposed rules address the following subjects for which there was no statutory instruction or guidance. They are necessary to implement and spend the appropriation:

- who could be served;
- what services would be reimbursed;
- who would provide the services;
- how the service providers could be reimbursed;
- what referral mechanism should be used after 72 hours; and
- whether the services would be considered an entitlement.

Fiscal effects

The department expects the effect of these proposed rules to equal the amount appropriated, \$2,032,770 annually.

Persons affected

This proposal would affect about 50 mental health services providers and approximately 900 to 1000 individuals.

5. The department intends to apply the proposed reimbursement rules to services provided on or after March 1, 2008. There is no negative impact to providers or individuals if these rules are retroactive to that date.

6. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on March 13, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ John Koch
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State February 4, 2008.